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March 15, 2005

2005 MAR 24 P 3:57  
Jan Witold Baran  
202.719.7330  
jbaran@wrf.com

BY HAND DELIVERY

Federal Election Commission  
Office of General Counsel  
999 E Street, NW  
Washington, DC 20463

AOR 2005-4

2005 MAR 15 A 11:45  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

Re: Advisory Opinion Request

Dear Commissioners:

This office represents Congressman John Boehner and Friends of John Boehner ("Committee"), on whose behalf we hereby request an Advisory Opinion from the Federal Election Commission ("the Commission") pursuant to 2 U.S.C. § 437f and 11 C.F.R. Part 112. Our client seeks the Commission's opinion on whether the Committee must report court-ordered restitution when those payments are assigned to a charitable organization.

#### FACTS

On April 15, 2003, the Committee notified the FEC that its former treasurer, Russell E. Roberts, had misappropriated campaign funds. (April 15, 2003, letter from Jan Witold Baran to FEC, attached.) At that time, the Committee filed amendments to all reports for calendar years 2000, 2001, and 2003 which reflected \$418,559.38 which Mr. Roberts had paid to himself. While the Committee stated that it would seek restitution, it also informed the FEC that restitution was highly unlikely. Accordingly, the Committee did not report any debt owed from Mr. Roberts.

On January 29, 2004, the District Court for the Southern District of Ohio after a guilty plea ordered Russell E. Roberts to pay restitution to the Friends of John Boehner in connection with the sentencing of Mr. Roberts for the embezzlement of funds. The order states, in pertinent part,

The Defendant shall pay restitution of \$617,562.88. While incarcerated in the Bureau of Prisons, the Defendant shall pay at least \$25.00 per quarter toward the restitution obligation if assigned a non-UNICOR or grade 5 UNICOR

Federal Election Commission

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job; or at least 50% of his monthly pay if assigned a UNICOR grade 1-4 job. Within thirty days of the commencement of the term of supervised release, the Defendant shall pay restitution at a rate of at least \$10 per month. The Court will reassess the Defendant's ability to pay from time to time upon the probation officer's recommendation.

Pursuant to other provisions of the order, Mr. Roberts was sentenced to imprisonment of thirty months and thereafter a term of supervised release of three years. (Court Order attached.)<sup>1</sup>

The Friends of John Boehner recently received a \$25 installment from Mr. Roberts through the court system. For the foreseeable future, Mr. Roberts will pay no more than \$100 per calendar year in restitution, and once released, the restitution amount will increase to only \$120 per year. If Congressman Boehner were in office for another forty years, the projected amount of the required restitution would be less than \$5,000. As should be readily apparent from the restitution order, at the required rate of repayment, Friends of John Boehner will never obtain full restitution from Mr. Roberts. Thus, the hundreds of thousands of dollars stolen by Mr. Roberts is not an accurate representation of the Committee's potential receipts.

Instead of accepting restitution to the Committee, Congressman Boehner wishes the funds to be redirected or assigned to The Community Foundation of West Chester/Liberty, an organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. (IRS letter attached.)

#### DISCUSSION

The Committee requests confirmation that restitution payments by Mr. Roberts that are assigned to the Community Foundation West Chester/Liberty do not constitute receipts of the Committee and therefore need not be reported. Furthermore, the Committee requests confirmation that under the circumstances, there is no debt from Mr. Roberts that must be reported under the Act and Commission regulations.

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<sup>1</sup> The amount stolen by Mr. Roberts which is stated in the order includes pre-2000 embezzlements.

Federal Election Commission

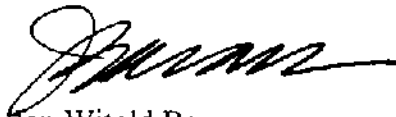
March 15, 2005

Page 3

The Committee is aware of Advisory Opinion 1991-38 which pertained to the reporting of restitution payments. In that opinion, the FEC concluded that payments accepted by a committee were reportable and that the amount embezzled had to be disclosed as a debt. However, the facts in Advisory Opinion 1991-38 differed in the following material respects. First, the committee there wished to accept and deposit the payments. Second, the amounts of restitution were substantially larger. Third, the committee did not seek to assign or otherwise transfer the proceeds to a charity. To the contrary, the committee sought to use the restitution in the candidate's next election. Finally, the amount of the likely restitution apparently could be calculated. In all these respects, the position of Friends of Boehner differs: it does not wish to accept and deposit the payments; the restitution amounts are de minimis; it wants to assign the proceeds to charity. Since the restitution payments will not be accepted, deposited, or used by the Committee or anyone else for campaign purposes, they should not be deemed receipts of the Committee and future amounts to be paid by Mr. Roberts should not be deemed a debt to the Committee.

The Commission's opinion confirming the above would be appreciated.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jan Witold Baran', with a stylized, cursive script.

Jan Witold Baran

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

United States of America,

Plaintiff,

vs.

Russell E. Roberts,

Defendant.

Case No. 1:03-CR-119

JUDGMENT INCLUDING SENTENCE  
UNDER THE SENTENCING REFORM ACT

The Defendant appeared with counsel, C. Ransom Hudson, Esq., before this Court for sentencing on January 29, 2004.

The Defendant has entered guilty pleas to Counts 1 and 2 of the Criminal Information. Accordingly, the Defendant is adjudged **GUILTY** of:

**COUNT 1: INTERSTATE TRANSPORTATION OF STOLEN PROPERTY**, in violation of Title 18, Section 2314 of the United States Code; and,

**COUNT 2: CAUSING FALSE STATEMENTS TO BE MADE TO THE FEDERAL ELECTION COMMISSION**, in violation of Title 18, Section 1001 of the United States Code.

The Defendant is sentenced as provided in pages 1 through 4 of this Judgment pursuant to the Sentencing Reform Act of 1984 and the United States Sentencing Guidelines ("U.S.S.G.") as follows:

The Defendant is hereby sentenced to a term of imprisonment of **THIRTY (30) MONTHS** on Counts 1 and 2, to run concurrently;

Following the term of imprisonment, the Defendant shall serve a term of **THREE (3) YEARS** of supervised release on Counts 1 and 2, to run concurrently;

During the term of supervised release, the Defendant shall be subject to the following standard conditions of supervised

release for the Southern District of Ohio:

- (1) the Defendant shall not commit another federal, state, or local crime;
- (2) the Defendant shall not leave this judicial district without permission of the Court or probation officer;
- (3) the Defendant shall report to the probation officer as directed by the probation officer or the Court and shall submit a truthful and complete written report within the first five days of each month;
- (4) the Defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (5) the Defendant shall meet family responsibilities;
- (6) the Defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (7) the Defendant shall notify the probation officer within seventy-two hours of any change in residence or employment;
- (8) the Defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- (9) the Defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (10) the Defendant shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (11) the Defendant shall permit a probation

officer to visit him at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

- (12) the Defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- (13) the Defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court; and
- (14) the Defendant shall notify third parties of risks that may be occasioned by the Defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the Defendant's compliance with such notification requirement;

In addition to the standard conditions of supervised release, the following special conditions shall apply:

- (1) the Defendant shall not commit another federal, state, or local crime;
- (2) the Defendant shall not possess a firearm or other dangerous weapon;
- (3) the Defendant shall not possess a controlled substance;
- (4) the Defendant shall provide all financial information requested by the probation officer and may not open any new lines of credit or make purchases on existing lines of credit without the probation officer's prior approval;
- (5) the Defendant shall participate in the National Corrective Training Institute (Theft Class) at his own expense and comply with all tax laws;
- (6) the Defendant shall participate in mental health counseling and Gamblers Anonymous at the direction of

the probation officer;

The Defendant shall pay the restitution of \$617,562.88. While incarcerated in the Bureau of Prisons, the Defendant shall pay at least \$25.00 per quarter toward the restitution obligation if assigned a non-UNICOR or grade 5 UNICOR job; or at least 50% of his monthly pay if assigned a UNICOR grade 1-4 job. Within thirty days of the commencement of the term of supervised release, the Defendant shall pay restitution at a rate of at least \$10 per month. The Court will reassess the Defendant's ability to pay from time to time upon the probation officer's recommendation.

The Defendant shall pay immediately a \$200 special assessment.

The statement of reasons for this sentence shall be filed separately.

The Defendant may **VOLUNTARILY SURRENDER** for service of sentence at the time and institution designated by the Bureau of Prisons.

The Court recommends to the Bureau of Prisons that the Defendant be incarcerated at the prison camp at FCI Ashland, Kentucky.

The Defendant is hereby notified that he has a right to appeal this sentence, and if he is unable to pay the cost of an appeal, he has the right to apply to this Court for leave to proceed in forma pauperis. If he is indigent and cannot retain a lawyer, he may apply, and one will be appointed to represent him in his appeal.

The Defendant is further advised that, in accordance with the provisions of Rule 4(b) of the Rules of Appellate Procedure, he must file his notice of appeal with the Clerk of the United States District Court within 10 days of the filing of this judgment, which will be filed on January 29, 2004. Therefore, the Defendant must file his notice of appeal on or before February 10, 2004. The Defendant is also advised that if he so requests, the Clerk of this Court will prepare and file forthwith a notice of appeal on his behalf.

s/Sandra S. Beckwith  
Sandra S. Beckwith  
United States District Judge

January 29, 2004

Date

INTERNAL REVENUE SERVICE  
P. O. BOX 2508  
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: **MAR 17 2004**

THE COMMUNITY FOUNDATION OF WEST  
CHESTER LIBERTY  
5641 UNION CENTRE DR  
WEST CHESTER, OH 45069-0000

Employer Identification Number:  
31-1661966

DLN:

17053066762054

Contact Person:

JAMES A BRANDES

ID# 31150

Contact Telephone Number:

(877) 829-5500

Public Charity Status:

170(b) (1) (A) (vi)

Dear Applicant:

Our letter dated November 1999, stated you would be exempt from Federal income tax under section 501(c) (3) of the Internal Revenue Code, and you would be treated as a public charity during an advance ruling period.

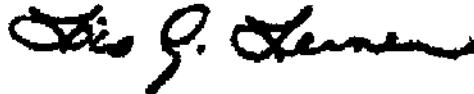
Based on our records and on the information you submitted, we are pleased to confirm that you are exempt under section 501(c) (3) of the Code, and you are classified as a public charity under the Code section listed in the heading of this letter.

Publication 557, Tax-Exempt Status for Your Organization, provides detailed information about your rights and responsibilities as an exempt organization. You may request a copy by calling the toll-free number for forms, (800) 829-3676. Information is also available on our Internet Web Site at [www.irs.gov](http://www.irs.gov).

If you have general questions about exempt organizations, please call our toll-free number shown in the heading between 8:00 a.m. - 6:30 p.m. Eastern time.

Please keep this letter in your permanent records.

Sincerely yours,



Lois G. Lerner  
Director, Exempt Organizations  
Rulings and Agreements

Letter 1050 (DO/CG)

Jan 12 2005 09:43 P.02

Fax:





Wiley Rein & Fielding LLP

Jan Witold Baran  
202.719.7330  
jbaran@wrf.com

April 15, 2003

Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: Friends of John Boehner (April 2003 Quarterly Report)

Dear Sir:

Friends of John Boehner ("Committee") filed today its April 2003 Quarterly Report and amendments for calendar years 2000, 2001, and 2002. The amendments are necessary to reflect financial irregularities discovered by the Committee.

Specifically, the Committee recently noticed that certain disbursements had been misreported on its latest FEC reports. The Committee was led to believe by its former treasurer that these problems stemmed from a flood in March, 2001 which had destroyed the Committee's computer records. However, in further researching these problems and comparing the FEC reports to the Committee's actual payments, the Committee discovered a number of irregularities. The irregularities had been hidden through a series of deceptive practices to falsify records and conceal activities. The Committee's former treasurer was confronted and then admitted that he had been misappropriating Committee funds to support a gambling habit. The individual was immediately fired and a professional treasurer was hired to prepare accurate FEC reports and amendments. The amendments, in combination with the April 2003 Quarterly Report, reflect unauthorized expenditures in the amount of \$418,559.38. The Committee has notified the FBI of these irregularities. An investigation is ongoing.

The Committee will seek restitution from this individual. However, it is unlikely that he will be able to repay the campaign for unauthorized disbursements. Thus, consistent with Advisory Opinion 1989-10, the Committee will not reflect a debt from this person.

Finally, the Committee has now instituted several procedures to ensure that this does not happen again. These procedures include a monthly bank reconciliation conducted by a CPA and regular independent audits.

Sincerely,

Jan Witold Baran



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COMMISSION  
OFFICE OF THE  
CLERK  
WASHINGTON, DC 20542  
03/22/2009 10:52 AM  
MAR 22 A 10:57

"Baran, Jan."  
<jbaran@wrf.com>

To <mmarinelli@fec.gov>

cc

bcc

Subject Advisory Opinion Request (Friends of John Boehner)

Mr. Marinelli,

This message confirms our telephone discussion today regarding the above-captioned advisory opinion request. Specifically, I am confirming that Friends of John Boehner is the ongoing principal campaign committee authorized by Congressman John Boehner and does not intend to terminate in the foreseeable future.

I trust this is the information that you need.

**Jan Witold Baran**

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202.719.7207(fax)

jbaran@wrf.com

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OFFICE OF GENERAL  
COUNSEL  
Baran, Jan  
<jbaran@wrf.com>

2009 JAN 22 P 3:23

To <mmarinelli@fec.gov>  
cc  
bcc  
Subject Advisory Opinion Request (Friends of John Boehner);  
Confirmation II

Mr. Marinelli:

This is confirmation of representations made to you in a second telephone discussion today regarding the above-captioned Request. Specifically, I confirmed to you that the assignment by my client of restitution proceeds to the designated charity is irrevocable. Any checks received by Friends of John Boehner from the court will be endorsed to the charity. None of the restitution checks will be deposited into the accounts of the committee.

Furthermore, I confirmed to you that Friends of John Boehner is prepared to petition the court to revise the sentencing and restitution order to provide that checks be made payable to the charity directly. However, my client hopes that such a time-consuming and perhaps costly procedure involving a busy court is not required in order to comply with the Federal Election Campaign Act.

Thank you for your expeditious consideration of the advisory opinion request.

**Jan Witold Baran**  
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Washington, DC 20006

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jbaran@wrf.com

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